STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Joint Submission of the Amended Plan of Record for Operations Support Systems ("OSS")	)))	Docket No. 00-0592

REPLY BRIEF ON REHEARING OF AMERITECH ILLINOIS

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Illinois Bell Telephone Company ("Ameritech Illinois") respectfully submits its Reply Brief on Rehearing. For the reasons set forth herein, the Commission should remove the "10 loops plus tagging" requirement from its January 24 Order on Issues 29/31, or at a minimum remove the tagging requirement, and uphold its prior decision on direct access to back-office systems.

ARGUMENT

I. THE ARGUMENTS AGAINST APPLICATION OF THE "IMPAIR" TEST ARE MERITLESS.

As Ameritech Illinois demonstrated in its Application for Rehearing (at 10-14) and Initial Brief on Rehearing (at 2-3), the FCC's *UNE Remand Order*[1] and regulations do not require incumbent LECs to provide loop makeup information on multiple loops at an address, and therefore a state commission can impose such a requirement – such as the "10 loops plus tagging" requirement – only if it first independently finds that such a requirement satisfies the "impair" test of Section 251(d)(2) of the 1996 Act and FCC Rule 317(b) (47 U.S.C. 251(d)(2) and 47 C.F.R. 51.317(b)). Covad, AT&T, and Staff assert that the impair test does not apply here and that state commissions can impose additional unbundling requirements that go beyond what the FCC has ordered, without applying the impair test at all. These arguments are meritless and conflict with the plain language of the 1996 Act, the FCC's implementing rules, and the United States Supreme Court's reading of the 1996 Act.[2]

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[1] Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket 96-98, FCC 99-238 (rel. Nov. 5, 1999) ("*UNE Remand Order*").

[2] Covad contends (at 1 n.1) that on June 7, 2001 Covad and Ameritech Illinois "reached a settlement" on the loop qualification issues but that "Ameritech subsequently reneged on its agreement" and that Covad "does not waive its rights to enforce" that "agreement." Ameritech Illinois did not renege on anything. The truth is that while Ameritech Illinois at one point believed it had an agreement in principle with Covad, no agreement was ever finalized.

Whenever an additional unbundling obligation is proposed and there is disagreement about whether it is legally required, the first question is whether the proposed requirement is imposed by the FCC's *UNE Remand Order* and implementing regulations. Here the answer is no. The FCC has stated that the *UNE Remand Order* does not require an incumbent LEC to provide loop makeup on multiple loops per address where the incumbent's systems would return loop makeup on a copper loop, if one exists (as will occur with the CR-69a enhancement), rather than a fiber loop. *Kansas/Oklahoma 271 Order*, para. 128[3] ("We find that it is not self-evident from the *UNE Remand Order* that a BOC must provide loop make-up information on all loops that serve a particular address"). Under these circumstances, the FCC has found that a BOC which provides loop makeup on only one loop per address would satisfy Section 271 and thus also Section 251(c)(3) of the 1996 Act and the *UNE Remand Order*. The FCC also invited any CLEC that disagreed with its reading of the *UNE Remand Order* to file a petition for declaratory judgment or rulemaking on the issues (*id.*).

A. Response to Covad and AT&T.

Covad, A&T, and Staff try to address the *Kansas/Oklahoma 271 Order* in different ways. Covad essentially ignores the decision altogether, asserting that because that decision does not specifically tell state commissions that they would need to apply the impair test to impose requirements beyond those of the *UNE Remand Order*, the test can never apply. (Covad Br. at 7-8). That claim, however, completely ignores the FCC's statement that state commissions could impose different requirements only to the extent "consistent with" the 1996 Act. *Kansas/Oklahoma 271 Order*, para. 128 n. 353. Because Section 251(d)(2) of the 1996 Act and

[3] Mem. Opinion and Order, CC Docket 00-217, FCC 01-29 (rel. Jan. 22, 2001) ("*Kansas/Oklahoma 271 Order*").

Rule 317 together require *all* unbundling requirements to pass the impair test,[4] a state-imposed requirement that did not apply the impair test would by definition be inconsistent with and violate the 1996 Act.

Covad and AT&T also make the odd argument that a 10 loops plus tagging requirement does not have to pass the impair test because loop qualification and ordering are part of the OSS UNE, which has already passed the impair test. The OSS UNE, of course, is expansive, and it covers many different areas of an ILEC's operations, from pre-ordering through maintenance and repair and billing. Covad and AT&T argue, however, that a state commission can make material changes to *anything* the FCC has ordered with respect to any aspect of OSS – no matter how severe or how far beyond what the FCC required – so long as they can still cram the changes under the "OSS UNE" label. That simply makes no sense: It's like saying a court could increase a statutory fine by a factor of 10 without any rhyme or reason because all of the money still falls under the heading of a "fine." The argument reduces to an extreme oversimplification of semantics over substance.

Indeed, the FCC has repeatedly made clear that the mere fact that something has been defined as a UNE does not mean that any and every variation also automatically must be unbundled because it is related to the original UNE. For example, the FCC defined the local loop as a UNE in its *Local Competition First Report and Order* and again in the *UNE Remand Order*, but when faced with a request to define sub-loops as a UNE it separately applied the impair test to sub-loops alone, even though they are just part of the existing loop UNE. *UNE Remand Order*, paras. 205, 209-19. Likewise, the FCC applied a separate impair test to the high frequency portion

[4] Section 251(d)(2) gives the FCC authority to apply the "necessary" and "impair" tests and decide which network elements must be unbundled. FCC Rule 317 then sub-delegates some authority to state commissions to impose unbundling requirements, but only if the state commission complies with all requirements of Rule 317, which include application of the impair test. 47 C.F.R. 51.317(b)(4); *UNE Remand Order*, paras. 154-55.

of the loop ("HFPL"), even though that, too, was just a portion of the pre-existing loop UNE.[5] And the FCC applied a separate impair test yet again when requiring ILECs to provide dark fiber loops (*UNE Remand Order*, paras. 196-99) even though it had already defined loops as a UNE. The FCC similarly made clear that a separate impair analysis is required when an existing UNE is proposed for use in providing service in a new market, such as exchange access.[6] Under Covad's and AT&T's theory no impair analysis was necessary in any of these situations, but the fact that the FCC has applied the impair test in each such case shows that AT&T and Covad are simply wrong on the law.

Covad and AT&T also contend that the *UNE Remand Order* itself can still be interpreted by a state commission to require 10 loops plus tagging. Attempts to evade the FCC's interpretation here are improper collateral attacks on the FCC's finding, and are not permitted. *E.g.*, *FCC v. ITT World Comms., Inc.*, 466 U.S. 463, 468 (1984).

Covad and AT&T further assert that the impair test does not apply because, they say, the only limit on state power under the 1996 Act is Section 261(c). What Covad and AT&T neglect to mention, of course, is that Section 261(c) itself requires any state-imposed requirement to be consistent with both the Act and the FCC's rules – and the Act and the FCC's rules explicitly require application of the impair test to all proposed new unbundling obligations through Section 251(d)(2) and Rule 317(b)(4).[7]

Under the flawed 261(c) theory asserted by Covad and AT&T, the impair test can never apply when a state commission is considering whether to adopt "(i) additional pro-competitive

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[5] Third Report and Order in CC Docket 98-147 and Fourth Report and Order in CC Docket 96-98, FCC 99-235 (rel. Dec. 9, 1999) at paras. 29-61.

[6] Supplemental Order Clarification, CC Docket 96-98, FCC 00-183 (re. June 2, 2000) at paras. 15-16.

[7] AT&T seems to complain that applying the impair test to a 10 loops plus tagging requirement would create a slippery slope where a CLEC could never know what functionalities were included in the OSS UNE. Of course, AT&T provides no basis for that assertion because it makes no sense. In this case, it is clear that the functionalities at

"requirements" (as opposed to elements) *pursuant to* the 1996 Act, or (ii) additional pro-competitive requirements (or even network elements unbundling requirements) *pursuant to* state-law authority." (AT&T Br. at 5; Covad Br. at 7). Both claims are demonstrably wrong. First, the FCC directly held, and Staff acknowledges here, that the impair test *does* apply to new unbundling "requirements" even if they are not for entire new elements. *UNE Remand Order*, para. 155 (requiring states to apply Rule 317 when establishing new "access obligations" or "unbundling obligations"); Staff Br. at 14 (the impair test applies when a state seeks to "impose[ ] an additional obligation upon an incumbent LEC beyond those obligations the FCC attributes to each unbundled network element"). Second, a state commission cannot avoid the restrictions of the 1996 Act and the FCC's implementing regulations simply by putting on a state-law hat and declaring that in a particular instance it is regulating under state law, and thus is exempt from federal law altogether. Such a transparent end-run of federal law is precluded by the Supremacy Clause of the U.S. Constitution, which makes federal law the supreme law of the land regardless of what authority a state purports to act under. U.S. Const., Art. VI, cl. 2. Moreover, the U.S. Supreme Court specifically found that, "[w]ith regard to the matters addressed by the 1996 Act" – which includes unbundling -- the federal government "unquestionably has" "taken the regulation of local telecommunications competition away from the States." *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 378 n.6 (1999) ("*IUB II*"). Thus, state authority in such matters survives only to the extent granted by the 1996 Act, and, as explained above, the authority that states have is limited by the requirement to apply the impair test to all proposed new unbundling obligations, including modifications to existing FCC requirements.

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issue are not included in the OSS UNE as currently defined by the FCC. An agency's interpretation of its own orders and rules is entitled to "controlling weight." *E.g.*, *Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 512 (1994).

B. Response to Staff.

Staff argues that the *Kansas/Oklahoma 271 Order* did not actually mean what it said. Rather, according to Staff, the FCC never actually decided the issue of whether the *UNE Remand Order* required ILECs to provide makeup information on multiple loops per address, but rather left that question for another day. That theory cannot stand in light of the plain language of the *Kansas/Oklahoma 271 Order,* which states that the *UNE Remand Order* does not require ILECs to provide loop makeup on multiple loops in the circumstances described above, otherwise the FCC could not have held that SWBT satisfied Section 271 and Section 251(c)(3) of the 1996 Act. All the language cited by Staff did is open the door for CLECs to argue for a different reading of the *UNE Remand Order* through a separate FCC proceeding.

Staff also argues that the impair test is irrelevant because, under the Commission's SBC/Ameritech Merger Order in Docket 98-0555, Ameritech Illinois was required to collaborate on OSS issues and then arbitrate disputed issues. That much is true, but Staff then concludes that because arbitration was required, Ameritech Illinois necessarily consented, in advance, to any resulting order from the arbitration regardless of its legality. Ameritech Illinois consented to no such thing and the Merger Order requires no such thing. The Merger Order did not give the Commission carte blanche to order whatever it wanted in the OSS arbitration, isolated and exempted from all applicable law. Rather, it was a forum for parties to work our unresolved issues, and the results of the arbitration are of course subject to all applicable legal requirements. One of those requirements is applying the impair test to proposed unbundling obligations that go beyond what the FCC has required.

II. THE ORDER'S 10 LOOPS PLUS TAGGING REQUIREMENT DOES NOT SATISFY THE IMPAIR TEST.

Once it is established that 10 loops plus tagging exceeds federal requirements, the next question is whether it actually meets the impair test. Staff is the only party to address this issue head-on. Covad and AT&T, having mistakenly denied the applicability of the impair test, pay little attention to whether that test could actually be met, which helps prove that it cannot.

A. Response to Covad.

Covad purports to discuss the competitive impact of 10 loops plus tagging at pages 12-16 of its brief, but the argument consists mostly of misrepresentations of what Ameritech Illinois actually does with respect to loop qualification and of Ameritech Illinois' arguments in this case. Once those misrepresentations are corrected, it is clear that Covad has no claim that it is materially impaired by the lack of a 10 loops plus tagging requirement.

As shown in Ameritech Illinois' Initial Brief on Rehearing, the impair test demands a "fact-intensive" analysis of the "totality of the circumstances." *UNE Remand Order*, paras. 62, 142. Covad's only real attempt to discuss the impair test, however, is its claim that the impair test requires analysis of alternatives outside the incumbent LEC's network and that there is no alternative source for loop makeup information. That extremely narrow view of the impair analysis completely ignores the context of this case, where the alternative to be considered is the status quo, *i.e.*, the loop makeup information options that Ameritech Illinois already provides. If the Commission failed to consider those options it would not be conducting the "totality of the circumstances" investigation required by the impair test.

Covad tries to attack the existing loop qualification options, but with no success. Covad begins by asserting that "Ameritech believes that it – rather than a [sic] xDSL provider – can select the 'optimal' or 'preferred' loop for any type of xDSL service on both the pre-ordering and

ordering stage." (Covad Br. at 13). But Ameritech Illinois has never claimed that.[8] At the pre-ordering stage, the type of service that might be provided is not even a consideration of Ameritech Illinois. If the loop makeup is requested of a working telephone number ("WTN"), the makeup information on that loop is returned. If the loop makeup is requested by address, Ameritech Illinois provides loop makeup information on the first loop returned from its systems for that service address, and with the upcoming CR-69a enhancement will return loop makeup information on loops in a prioritized manner, with a non-loaded copper loop getting highest priority. A non-loaded copper loop can be used for any type of xDSL service (Tr. 1803-04), and that universal compatibility is what helps make it the first preference. At the *ordering* stage, Ameritech Illinois selects and provisions a loop (if one is available) based on the type of loop requested by the CLEC. (AI Ex. 2.1 (Zills Rebuttal) at 3). In other words, Ameritech Illinois provisions the best loop that fulfills the CLEC's order; we make no judgment about what type of xDSL service the CLEC will ultimately provide to its customer.

Covad also claims that "the record establishes that Ameritech's systems can return loop makeup information on multiple loops." (Covad Br. at 8-10). That claim both ignores and distorts the actual record evidence. Covad's theory is that the information retrieved from the Loop Facility Assignment Control System ("LFACS") and provided to Ameritech Illinois' middleware is actually the full loop makeup information on that loop. Ameritech Illinois' witnesses, however, took special pains to make clear that the information provided by LFACS is *not* full loop makeup information like that returned to CLECs and that full loop makeup information comes from the ARES database. (Tr. 1621, 1640, 1818-19). The information provided by LFACS is some

[8] Covad later asserts (at 15) that Ameritech Illinois claimed in the first phase of this case that it provided an "optimal" loop at loop qualification. Covad apparently misunderstood the evidence in the first phase of this case, which clearly distinguished the pre-ordering and ordering functions and what Ameritech Illinois does at each. Ameritech Illinois did

information on the loop, but full loop makeup information availability is verified *in ARES*. (Tr. 1819). (And in any event, of course, the question is not just whether the systems could internally return loop makeup information on multiple loops, but also whether that information could be passed to CLECs. Existing interfaces do not include capability. Thus, the record is clear that there is no capability today for Ameritech Illinois' systems to actually return full loop makeup information to the CLEC on multiple loops.

Covad also complains that, without tagging, it "cannot be assured that the loop necessary to provision the service requested [for] the consumer will be available." (Covad Br. at 14). As Covad later admits, however (at 18), a CLEC can move immediately from the pre-ordering process to the ordering process, and if it acts quickly enough it can maximize the chances that the loop it saw during pre-ordering will be the one actually provisioned. Otherwise, if Covad delays between pre-ordering and ordering, the loop could be assigned elsewhere under the first-come, first served provision process. That is obviously the most fair system, and the fact that it may lead to another CLEC getting a loop Covad wanted cannot be blamed on Ameritech Illinois.

Covad then asserts that Ameritech Illinois' "selection process" (Covad does not say whether it is referring to pre-ordering or ordering) may select a loop that requires conditioning when a loop that does not require conditioning is available. (Covad Br. at 15). As Ameritech Illinois' witnesses explained, however, the CR-69a enhancement will reduce eliminate that alleged problem by searching for a non-loaded copper loop as its first priority. (AI Ex. 3.1 (Coelho Rebuttal) at 2-3). Moreover, given that conditioning charges could be dramatically reduced from what they were at the time of the January 24 Order, the alleged financial impact of paying for

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not claim that loop qualification used an "optimization" process. *See, e.g.*, Post-Hearing Comments of Ameritech Illinois, at 81.

"unnecessary" conditioning – which was the Commission's main concern in the January 24 Order – could be dramatically reduced.

Covad faults the CR-69a enhancement, saying that, as a result of the prioritized hierarchy used to search for loops under CR-69a, Ameritech Illinois would "continue[] to make judgments in the loop for CLECs." (Covad Br. at 16). But Covad wants it both ways: it criticizes a process that provides information on the first loop it finds (and thus makes no "judgments" on the loop) but then lashes out at a process designed to always search for a universally-compatible xDSL-capable loop as its first priority (because that allegedly makes *too many* "judgments").[9] And as explained above, CR-69a is designed to meet the general desires of all xDSL providers, not to make "judgments" for them.

In short, while Covad makes various claims about why it would *like* to get loop makeup on multiple loops (which it already can get anyway, via requests based on telephone numbers rather than addresses (Al Ex. 3.0 (Milehan Direct) at 5)), it provides no hard evidence that it is actually impaired by the lack of such information or that having access to such information would clearly have a material benefit to Covad's ability to compete. The mere desire for something is not enough to satisfy the impair test.

Finally, Covad spends a few pages on what it alleges other incumbent LECs do with regard to loop qualification. Ameritech Illinois has already explained why the Commission should again ignore – as it did the first time around – unsupported claims about what other ILECs do, but a few additional points must be made. First, what other ILECs may have done voluntarily is completely irrelevant to whether 10 loops plus tagging can be compelled under the impair test. Second, there

[9] Both Covad and Staff contend that Ameritech Illinois did not consult with Covad before designing CR-69a. As the record shows, however, Ameritech Illinois took into account the general desires of all CLECs, which it knew from its biweekly workshops with CLECs, to design CR-69 and CR-69a to meet the primary needs of all xDSL providers. (Tr. 1655-56).

is no evidence that Covad can compete in other ILECs' regions but not in Illinois, which would be the only way to make the practices of other ILECs relevant. Third, Covad's heavy reliance on BellSouth is undercut by the fact that it has sued BellSouth in federal court and included allegations of inadequate loop qualification processes in support of antitrust claims (AI Ex. 3.1 (Coelho Rebuttal) Sch. PC-1 at p. 25, para. 71). Fourth, Covad's reliance on what BellSouth does with its LFACS database is entirely irrelevant to what Ameritech Illinois could or could not do with its LFACS; the two systems are not identical and, in any event, unlike in BellSouth's region, LFACS in the Ameritech region is not used to provide the full loop makeup. (*See* Tr. 1621, 1640, 1818-19). Instead, ARES is used in the Ameritech region, a system that does not even exist in the BellSouth region. Fifth, Covad claims that BellSouth offers a type of "tagging" of particular loop, but what BellSouth actually appears to do is to "freeze" *all* loops on which it provides makeup information for up to 96 hours until the LEC places an order for one of those loops or abandons the reservation. (AI Ex. 2.1 (Zills Rebuttal) at 8). Loop reservation has already been rejected in Illinois (Order at 91).

B. Response to Staff.

Staff's impair analysis is inaccurate and incomplete. For example, Staff claims that "Ameritech's pre-ordering and ordering systems selects a loop for the CLEC based on the type of service that it believes the CLEC would provide." (Staff Br. at 22). Ameritech Illinois' pre-ordering system, with CR-69a, will select a loop that is universally compatible with xDSL service, which is all Ameritech Illinois knows about the type of service the CLEC intends to provide. (Tr. 1654; AI Ex. 2.1 (Zills Rebuttal at 3). The same is true at ordering; the ordering systems select a loop based on a request for an xDSL-capable loop, for example, either an ADSL or IDSL loop, with no control over what type of service the CLEC wants to provide to its end user over the requested loop. (*See* AI Ex. 2.1 (Zills Direct) at 4). Thus, Ameritech Illinois does not do anything

based on what "it believes the CLEC would provide," but rather gives the best response it can based on the type of loop requested.

Staff also claims that providing makeup information on multiple loops is possible because "BellSouth also uses LFACS and has modified its system to provide information on ten loops." (Staff Br. at 23). That claim, however, overlooks Mr. Zills's undisputed testimony that the LFACS used by BellSouth and the LFACS used by Ameritech Illinois are far from identical (Tr. 1818), and also ignores that in Illinois full loop makeup information comes from ARES, not LFACS.

Finally, Staff contends that Ameritech Illinois' processes "aversely affect[] the cost and quality of a CLEC's ability to provide xDSL services." (Staff Br. at 23). But Staff cites no record support for that claim, because there is none. Conclusory assertions cannot satisfy the FCC's impair test, which requires a fact-intensive inquiry and hard evidence of impairment.

III. THE TAGGING REQUIREMENT IS SEPARABLE FROM THE 10 LOOPS REQUIREMENT AND SHOULD BE REMOVED FOR ADDITIONAL, INDEPENDENT REASONS.

As Ameritech Illinois has explained, while a 10 loop requirement would be burdensome and unnecessary, a "tagging" requirement to identify every single loop and let a CLEC order a single loop adds an entire new realm of complexity and significantly and materially interferes with existing systems and processes. (Tr. 1913-14, 1917-19, 1925; AI Initial Br. on Rhg. at 11-13). None of the other parties address the merits of a tagging requirement separately, but from a legal perspective there is an additional reason to remove this requirement, besides not meeting the impair test. That reason is that a tagging requirement would conflict with both the *UNE Remand Order* and court holdings that incumbent LECs are not required to create new functionalities or provide "superior quality" service to CLECs.

The undisputed evidence is that *no customer*, be it retail, affiliate, or CLEC, can today specify or "tag" what particular loop it would like to order for service. (AI Ex. 2.1 (Zills Rebuttal) at 6). It is also undisputed that Ameritech Illinois does not currently have a tagging capability or functionality in its systems. (*Id.* at 4-5; AI Ex. 2.0 (Zills Direct) at 6-7). Indeed, Staff conducted extensive cross-examination on this point but ultimately appears to agree that creating such a functionality would be complex and time-consuming task. (*See* Staff Br. at 25-26). Because Ameritech Illinois does not currently have a tagging functionality and does not offer tagging to anyone, however, it cannot be required to create that new functionality. The FCC made clear in paragraph 429 of the *UNE Remand Order* that ILECs are not required to create entire new inventory mechanisms for CLECs if they don't exist already, and tagging is such a non-existent mechanism. Moreover, a tagging requirement would violate the Eighth Circuit's holding – which is now final and non-appealable – that ILECs cannot be required to construct facilities or provide superior quality service to CLECs, and that any command to do so would violate the plain language of the 1996 Act. As the Eighth Circuit has found and reaffirmed, Section 251(c)(3) only requires access to an incumbent's *existing* network, not to unbuilt superior functions, such as the tagging requirement here. *Iowa Utils Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997); 219 F.2d 744, 751, 757 (8th Cir. 2000).

Given these facts, there are two fundamental reasons for removing any tagging requirement. This first, as discussed above, is that such a requirement violates the *UNE Remand Order* and the Eighth Circuit decision on forcing ILECs to create new capabilities just for CLECs. The second is that even if a tagging capability existed it would not meet the impair test. This is important because Staff seems to believe that if tagging *could* be implemented it *must* be

implemented, but the Supreme Court rejected such an overbroad reading of the 1996 Act in *IUB II*, 525 U.S. at 390-91.

IV. TIMING ISSUE.

If the Commission were to retain a 10 loops plus tagging requirement, or some part thereof (which, as shown above, it should not), Covad asks that Ameritech Illinois be ordered to implement it in September 2001 and Staff asks that pre-ordering changes be made within 5 months of a final order on rehearing and ordering changes within 12 months of a final order on rehearing. Although Ameritech Illinois maintains that no such requirement should be imposed, Staff's proposed schedule is more reasonable than Covad's, as it recognizes that (i) none of the required changes is nearly as easy as the Commission may have assumed on an undeveloped record back in January, and (ii) the proposed tagging requirement is more complex and will take more time than the proposed pre-ordering requirement. One thing not specifically accounted for in Staff's proposal, however, is the need to take at least some of the necessary changes to Ameritech Illinois' processes through the established Change Management Process. Thus, *if* the Commission were to retain a 10 loops requirement (but not order tagging), Ameritech Illinois would -- without waiving its right to contest such requirements, which it continues to oppose -- offer the following proposal that could be implemented consistent with Staff's suggestions. To meet this timeframe, Ameritech Illinois would modify its systems to return actual loop makeup on multiple loops at a service address, up to ten loops, if available, that could be processed within 120 seconds of a request. The loops included within this proposal would include both pairs with dial tone (e.g., working telephone numbers or WTN) and connect through facilities (e.g., a cable pair assigned from a specific service address and connected back to the central office). The loops would be returned in the order that Ameritech Illinois' AEMS system receives such loops from its SAM system, which interacts with LFACS/ARES. To return such multiple loop makeup information, changes are also

required to the OSS interface between Ameritech Illinois and CLECs. This interface change would be required to go though the existing Change Management Process. For example, additional input would be required from a requesting CLEC to indicate whether it is requesting loop makeup information on only one loop per service address (e. g., CR-69a) or loop makeup on multiple loops. Subject to prioritization and agreement of such modification in the change management process, Ameritech Illinois would make the necessary modifications to its EDI LSOG 4 OSS interface to return multiple loop makeup.

Tagging, of course, is an entirely different story. Because neither this functionality nor anything like it exists today, Ameritech Illinois is unable to even offer a proposed implementation schedule. High level estimates show that attempting to develop any kind of tagging capability would take at least several months *after* a 10-loop capability was in place. (Cross Ex. 21). And tagging, too, would require changes to CLEC OSS interfaces and those changes would have to go through the Change Management Process. Given the undisputed facts that this ability does not exist within Ameritech Illinois' network systems for either itself or any other entity, and that the effort and time to create this ability are significant and could easily exceed 12 months, Ameritech Illinois respectfully requests that the tagging requirement be eliminated. In the alternative, and again without waiving its right to contest such a requirement, Ameritech Illinois respectfully suggests that the deployment time for this unbuilt tagging function would have to be based on the results of the Change Management Process once a specific understanding of the required interface and backend system changes is established.

V. MISCELLANEOUS AT&T ISSUES.

AT&T (at 4 n.1) reiterates its request to compel public disclosure of a confidential Ameritech Illinois document regarding Ameritech Illinois' internal processes for manual loop qualification. AT&T does so by – as Ameritech Illinois predicted it would – grossly and

deliberately distorting both the document itself and the evidence regarding the document. AT&T and Covad had the chance to cross-examine on this document, and as the testimony shows and as Ameritech Illinois backed up with numerous examples of actual manual loop qualification reports, the reports given to AADS did not contain any additional information other than what was provided to all other CLECs. (AI Resp. to Motion to Compel Public Disclosure, Att. A). AT&T completely ignores that fact.

Further, AT&T again misstates the facts when it claims that the document shows that "Ameritech's representatives are aware of AADS' particular loop needs" and "will pick the loop best suited for AADS' DSL services in the qualification process." (AT&T Br. at 4). AT&T tellingly provides no cite for that claim, because it is not true. As Ameritech Illinois has explained, the information field at issue not only has been provided to *all* CLECs, not just AADS, but also has nothing to do with the requesting CLEC's service needs; rather, it simply indicates to the CLEC that submitting repetitive manual loop makeup requests for that particular address will not yield any different result – which saves Ameritech Illinois from having to process multiple, redundant manual loop makeup requests for the same address by the same CLEC. Moreover, for all its bluster in misrepresenting the document and the record, AT&T still fails to point to any evidence that the document is not in fact confidential, which is the *only* basis on which public disclosure could be compelled. Finally, while AT&T and Covad both discuss the document and AT&T claims the Commission should "rely heavily" on the document in its ruling here, the fact is that the type and number of fields that Ameritech Illinois provides in response to a manual loop makeup requests – which are the same for all CLECs – has absolutely nothing to do with whether a 10 loops plus tagging requirement passes the impair test. This is just another smokescreen by AT&T and Covad to divert attention from the real issue, which they have chosen to ignore.

In another stretch, AT&T now seeks to strike "all testimony provided by Ameritech witness Mr. Hamilton concerning the necessary and impair standard." This, of course, is yet another diversion from the real issue here – whether 10 loops plus tagging meets the impair test – because AT&T and Covad know they have failed to meet their burden of proof on that test. In any event, AT&T's request is baseless. AT&T provides no *legal* basis for striking the testimony; it just says that the procedure adopted by the Hearing Examiners was "fundamentally unfair." (AT&T Br. at 6 n.4). But there is nothing "fundamentally unfair" about trying to determine the facts and develop an adequate record for decision. Moreover, AT&T and Covad had a full opportunity to cross-examine both Mr. Hamilton and Mr. Coelho and took advantage of that opportunity (and to the extent AT&T seems to complain about having previewed its cross to Mr. Hamilton when it cross-examined Mr. Coelho, the Hearing Examiner specifically warned AT&T of that very problem and AT&T voluntarily chose to proceed). Indeed, AT&T asked Mr. Hamilton basically the same line of purely legal questions it had asked Mr. Coelho. While AT&T may be unhappy with the answers to its purely legal questions (to which Ameritech Illinois objected), that is no basis for moving to strike.

VI. THE COMMISSION SHOULD REAFFIRM ITS PRIOR DECISION ON ISSUE 19 (B): DIRECT ACCESS TO BACK-END SYSTEMS.

The January 24 Order correctly rejected the CLECs' unsupported request for direct access to Ameritech Illinois's back-end systems. The Commission quite properly recognized the controlling distinction between access to the *information* contained in back-end systems and access to the back-end systems themselves. On the one hand, the Commission reasoned, nondiscriminatory access to information is required by law; on the other hand, "[d]irect access to an ILEC's back office or legacy systems is not required by the FCC or any authority to which we have been referred." (Order at 82). As the Commission explained, Ameritech Illinois already

offers access to information via electronic gateways, whose purpose is "to provide information contained in Ameritech Illinois OSS systems electronically and eliminate the need for a direct access requirement." (*Id.* at 83). Pointing to the CLECs' "sparse" presentation on this issue (*id.* at 81), the Commission found that the CLECs failed to "explain . . . why they need direct access to the systems" (*id.* at 82), failed to address the associated issues of "confidentiality, functionality, and security" (*id.* at 83) and failed to even explain "what [they] want, why they cannot get it through other means and how they propose to proceed" (*id.*).

Covad opens its challenge to this portion of the Order with a fatal concession, acknowledging (at 22) "the limited record" before the Commission on this issue, and stating that "Covad does not challenge on rehearing the Commission's finding regarding the factual record." Further, Covad fails to remedy, or even mention, the deficiencies that led the HEPO and the January 24 Order to reject its proposal. There is still no explanation of what Covad wants, why Covad wants it, why Covad cannot get it through other means, or how Covad proposes to proceed. There is absolutely no attempt to address the concerns of confidentiality and security that the Commission properly raised. The HEPO and the January 24 Order both asked Covad to explain and support their proposal. Covad has yet to answer.

Instead of doing anything to the Plan of Record or achieving any concrete result, Covad wants to edit the legal reasoning in the January 24 Order. Given Covad's own agreement that the lack of evidentiary support for its position provides an independent basis for the Commission's decision, and given Covad's failure to address that basis, the Commission should reject Covad's position out of hand.

Even on the issue it does address, Covad's brief simply rehashes arguments that the Commission thoroughly considered and squarely rejected. Covad utterly ignores the dispositive

distinction that is central to the January 24 Order: namely, the difference between access to information versus access to systems. (Order at 81) ("At the outset, we make clear our view that direct access to back office systems should not be confused with 'access' to information contained in those back office systems"). By Covad's own account, the authorities cited in its brief support only the need for information – which the Commission has already recognized and which is already satisfied by Ameritech Illinois' electronic gateways – not the access to actual back-end systems that Covad seeks here. Thus, Covad's statement that "the Commission inappropriately omitted any analysis of Ameritech's OSS obligations under the [1996] Act" is incorrect. The Commission conducted a thorough analysis of those obligations, and it disagreed with Covad's attempt to expand those obligations to include access to systems rather than access to information.

The only two authorities that even purport to address access to systems, rather than access to information, do not support Covad's request. The Commission has already acknowledged the order in the Covad/Rhythms arbitration, and found it insufficient to support Covad's position here. As the January 24 Order explains, "section 252(i) of the Act, and not this proceeding, is the appropriate means by which other carriers can opt into the Covad-Rhythms agreement if they so desire." The question here is whether unfettered, free-of-charge direct access is to become part of the Plan of Record, and the Commission quite correctly rejected Covad's attempt to circumvent section 252(i).

Likewise, Covad's citation to the decision on the line-sharing tariff (Docket No. 00-0393) provides no foundation for its position. As the Commission is aware, that decision is now itself on rehearing, and there is no need to expand its reach here.

Finally, the Commission should reject Covad's attempt to nullify the Merger Order's existing provisions on direct access to "service order processing systems." In addition, Condition

29 specifically requires "that a CLEC requesting such direct access enter[] into a contract to pay Ameritech Illinois for 50% of the costs of development and deployment." Covad's present attempt to wipe out both of those provisions and force Ameritech Illinois to create direct access to all backend legacy systems, and to bear *all* the costs of development and deployment that benefit Covad is nothing more than a collateral attack on the Merger Order, and should be rejected.

CONCLUSION

For the reasons set forth herein and in Ameritech Illinois' Initial Brief on Rehearing, the Commission should remove the 10 loops plus tagging requirement on Issues 29/31, or at a minimum remove the tagging requirement, and abide by its prior decision on direct access to back-office systems.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, J. Tyson Covey, an attorney, hereby certify that I caused copies of Ameritech Illinois' Reply Brief to Rehearing on the parties on the attached service list by e-mail, messenger, overnight mail, or U.S. Mail, with all charges paid, this 18th day of June, 2001.

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